

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**KENNETH WHITEHEAD,
LISA WHITEHEAD, INDIVIDUALS**

Plaintiff,

v.

**HMC ASSETS, LLC AS TRUSTEE FOR
CAM MORTGAGE TRUST 2013-1;
BSI FINANCIAL SERVICES, INC
(AS SERVICER); AND DOES 1
THROUGH 100, INCLUSIVE**

Defendant.

CIVIL ACTION NO.: 14-cv-13408-IT

SUPPLEMENTAL AFFIDAVIT OF GARY MCCARTHY

I, Gary McCarthy, being duly sworn, depose and state as follows:

1. I am a member of HMC Assets, LLC as Trustee for CAM Mortgage Trust 2013-1 (“HMC”) and have served in that capacity since April 30, 2013.
2. I submit this Affidavit in support of the Defendants’ Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction.
3. I make this affidavit based upon my personal knowledge and, further, upon my review of the servicing records for the subject property, which records were made and maintained in the regular or ordinary course of business of HMC and BSI Financial Services (“BSI”) as servicer for HMC at or near the time of the act, condition or event to which they relate, by persons employed by BSI or HMC Assets who had a business

duty to accurately and completely take, make and maintain such records and documents.

4. Part of my day to day business responsibilities and duties is to access the records of HMC. These records include, but are not limited to, the Original Whitehead Note.
5. If I were called upon to testify, I could and would testify competently to the facts set forth herein and I am authorized to submit this Affidavit on behalf of the Defendants.
6. On December 2, 2004, Kenneth Whitehead and Lisa Whitehead executed a Note in favor of Novelle Financial Services in the amount of three hundred ninety-eight thousand two hundred fifty and 00/100 (\$398,250.00) dollars. *See* Exhibit A (a true and correct copy of the Original Whitehead Note is attached hereto).
7. Deanthia Floyd, an authorized signatory for IMPAC Funding Corporation dba Novelle Financial Services, executed a blank endorsement of the original Whitehead Note from IMPAC Funding Corporation dba Novelle Financial Services via allonge that was affixed to the original Whitehead Note containing said blank endorsement. *See* Exhibit B (a true and correct copy of the Whitehead Note endorsed in blank from IMPAC Funding Corporation dba Novelle Financial Services is attached hereto).
8. A copy of the Whitehead Note, endorsed in blank from IMPAC Funding Corporation dba Novelle Financial Services, was saved to the electronic file of Select Portfolio Services, Inc. ("SPS"), the prior servicer of the Whitehead loan. *See* Exhibit B.
9. The original Whitehead Note was next negotiated and endorsed from IMPAC Funding Corporation dba Novelle Financial Serves to GRP Loan, LLC. *See* Exhibit A.

10. The Whitehead Note was specifically endorsed to GRP Loan, LLC when the negotiation was completed. *See* Exhibit A.
11. On October 26, 2009, the Original Whitehead Note was endorsed in blank by Kristen Tess, president of GRP Loan, LLC via allonge that was affixed to the Original Whitehead Note containing said blank endorsement. *See* Exhibit A.
12. HMC purchased the Whitehead loan in July of 2012.
13. On July 12, 2012, HMC took physical possession of the Original Whitehead Note, endorsed in blank through its Custodian Ellie Mashhoon of Deutsche Bank National Trust Company, 1761 East Saint Andrew Place, Santa Ana, CA 92705.
14. On July 12, 2012, the Original Whitehead Note, endorsed in blank was delivered to Deutsche Bank National Trust Company as Custodian for HMC.
15. On August 10, 2012, the servicing rights of the Whitehead Note were transferred from SPS to HMC's servicer BSI Financial Services, Inc. ("BSI").
16. Pursuant to the transfer of the servicing rights from SPS to BSI, SPS provided BSI with its electronic collateral file.
17. SPS's electronic copy of the collateral file contained a copy of the Whitehead Note which included the blank endorsement from IMPAC Funding Corporation dba Novelle Financial Services. *See* Exhibit B.
18. The electronic collateral file contained a copy of the Original Whitehead Note at the time of the first negotiation – in blank – but did not include, nor was timely updated to reflect the last two negotiations – the special endorsement to GRP Loan, LLC and the final blank endorsement.

19. Pursuant to 209 CMR 18.21A(2)(c), on December 18, 2013, Manuel Villegas, Vice President of BSI, executed a Certification as to HMC's ownership of the Whitehead Note and status as mortgagee and assignee of the Whitehead Mortgage (the "Certification"). *See* Exhibit C (a true and correct copy of the Certification is attached hereto).
20. Pursuant to 209 CMR 18.21A(2)(c), a copy of the Whitehead Note, endorsed in blank, previously maintained in SPS' electronic collateral file, and transferred to BSI, was attached to the Certification. *See* Exhibit C.
21. On March 4, 2014, BSI transferred the foreclosure of the Whitehead loan from the office of Ablitt & Scofield, P.C. to the offices of Doonan, Graves & Longoria, LLC ("DG&L").
22. The electronic copy of the Whitehead Note endorsed in blank by IMPAC Funding Corporation dba Novelle Financial Services was attached to the Certification. *See* Exhibit C.
23. On December 18, 2013, the date of execution of the Certification, HMC was the holder and owner of the Whitehead Note and mortgagee of the Whitehead Mortgage; and, on September 24, 2014, a Corrective Certification was executed by Manuel Villegas, Vice President of BSI, the servicer for HMC with a true and correct copy of the Original Note, two allonges and final blank endorsement. *See* Exhibit D (a true and correct copy of the Corrective Certification is attached hereto).
24. Specifically, HMC owned and was in physical possession of the original Whitehead Note, endorsed in blank, through its custodian, Deutsche Bank, on April 25, 2014, the date of the first publication of the Notice of Mortgagee's Sale of Real Estate.

25. On August 18, 2014, DG&L informed HMC of the instant action and requested that the original Whitehead Note be sent to their office.
26. On September 2, 2014, the original Whitehead Note, endorsed in blank and including both allonges, was sent to the offices of DG&L via Federal Express overnight delivery with tracking number 4410 1093 9247. See Exhibit E (a true and correct printout of the tracking information for the Original Whitehead Note is attached hereto).
27. DG&L maintains physical possession of the original Whitehead Note, as agent for HMC. By virtue of the blank endorsement, HMC is entitled to enforce their instrument.

Sworn to under the pains and penalties of perjury, on this the 26th day of September, 2014.

By: _____
Its: _____

GARY W. MCARDIN
MANAGER

* Please see acknowledgment attached

State of _____
County of _____

On this ____ day of _____, 2014, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within

ACKNOWLEDGMENT

State of California
County of Los Angeles

On September 26, 2014 before me, Lisa T. Carmenate-Mayers
(insert name and title of the officer)

personally appeared Gary W. McCarthy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

